



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ASI Universal Corporation, Inc.--
Reconsideration

File: B-239680.2

Date: November 13, 1990

Yolanda V. Ryan, Esq., Kelley & Ryan, for the protester.
Daniel J. Piliero II, Esq., and Pamela J. Mazza, Esq.,
Piliero, Tobin & Mazza, for R&E Electronics, Inc., an
interested party.
S.J. Evans, National Aeronautics and Space Administration,
for the agency.
David R. Kohler, Esq., and Robert N. Wong, Esq., Office of
General Law, for the Small Business Administration.
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Request for reconsideration is denied where protester makes no showing of any legal error and claimed factual errors fail to provide a basis for reversal of the decision.

DECISION

ASI Universal Corporation, Inc. requests reconsideration of our decision of July 3, 1990, dismissing its protest of the award of a contract, by the National Aeronautics and Space Administration, to R&E Electronics, Inc., for operation and maintenance of the administrative telephone system at the John F. Kennedy Space Center. ASI Universal Corp., Inc., B-239680, July 3, 1990, 90-2 CPD ¶ 9.

We deny the request for reconsideration.

ASI's protest concerned the Small Business Administration's (SBA) regulations implementing an amendment to 15 U.S.C. § 637(a)(11) (1988), part of the SBA section 8(a) program. The amendment, section 303 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656, 102 Stat. 3853), effective October 1, 1989, requires competition of 8(a) procurements when certain enumerated thresholds are met. ASI contended that the SBA regulation (13 C.F.R. § 124.311(b)

(1990)) violated the amended statute because it exempted section 8(a) requirements which had been accepted for the 8(a) program prior to October 1, 1989. ASI also challenged the eligibility of the proposed awardee and maintained that if the sole-source award were disallowed, it would participate in the competition.

According to 13 C.F.R. § 124.311(h)(3), for "local buy" requirements (13 C.F.R. § 124.100), such as the NASA requirement, the appropriate SBA official will determine the geographical boundaries of the competition and only those 8(a) participants located within those boundaries are eligible to submit offers. The SBA informed us that at the time of its report at least two eligible concerns had been identified within Region IV from whom offers would be expected. According to the SBA official who would determine the applicable boundaries for competition, if the procurement were subject to competition as a result of our decision, it would be open only to Region IV program participants. ASI, as a Texas firm located in Region VI, would therefore not be eligible to compete. We dismissed the protest because we found that ASI did not have a direct economic interest affected by the award of the contract and, thus, was not an interested party. Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.3(m) (1990).

ASI then requested reconsideration of our dismissal contending that the decision was based upon the SBA's unsupported assertions regarding any future competition and upon certain misstatements of fact. After obtaining supplemental reports from the SBA and NASA, we provided ASI an opportunity to comment. Nothing in ASI's submission convinces us that we were incorrect in finding ASI not to be an interested party.

The determination of the geographical boundaries of a "local buy" 8(a) competition, and therefore the determination of which concerns may participate, is made by the Administrator for Minority Small Business and Capital Ownership Development. That official makes the determination "based on his/her knowledge of the 8(a) portfolio." 13 C.F.R. § 124.311(h)(3). Based upon that knowledge, the official determines whether to limit competition to 8(a) program participants within the geographical boundaries of one or more district offices or an entire region. Id. If the SBA determines "that there is not a reasonable expectation that at least two participants within such region will submit offers, SBA may authorize the procuring agency to accept offers from eligible [8(a) participants] in one or more other adjacent regions." Id. Absent such authorization, the competition will be limited to only those participants within the relevant geographical boundaries; all others are considered ineligible. Id.

As part of its original report, the SBA submitted an affidavit from the appropriate SBA official which explained that in view of the current existence of at least two capable Region IV participants from which he would expect an offer, he would not open a competition of the requirement outside Region IV. As part of its supplemental report, the SBA has submitted an additional affidavit from the same official which states in pertinent part:

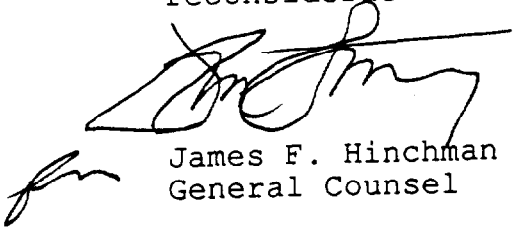
"Based on my knowledge of the Region IV portfolio, there presently exist five (5) 8(a) companies certified for [Standard Industrial Classification] SIC code 4899. Since I have a reasonable expectation that I would receive offers from at least two of these companies, if this requirement were competed today, I would not authorize NASA to accept bids from adjoining regions."

ASI has submitted evidence that one of the two firms on which the SBA official originally relied is not eligible to participate. ASI also generally claims that the offerors on which the official now relies have not been shown to be eligible.

We need not address ASI's contentions that one of the two firms originally relied upon by the SBA official was not eligible because the question is whether ASI would be eligible to compete now if we sustained its protest. In this regard, ASI asserts that the SBA has not made the determinations reflected in the affidavits in good faith and speculates, among other things, that the SBA deliberately enrolled additional competitors in Region IV in order to protect its "sole-source" award to R&E. In the absence of any other evidence, ASI's bare allegation that these firms are not eligible is insufficient to sustain its protest. See Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275. Any contention that the government acted with bias or in bad faith to exclude an offeror from competition must be supported by convincing evidence that agency officials had a specific, malicious intent to harm the protester, since those officials are presumed to act in good faith. See Mictronics, Inc., B-234034, May 3, 1989, 89-1 CPD ¶ 420. ASI's allegations of bias and bad faith are based on inference and supposition, and thus, insufficient to meet its burden of proof. Id.

Therefore, the affidavits submitted by the SBA fully support the determination that ASI, as a Region VI concern, would not be eligible to participate in any recompetition we might recommend and, thus, it is not an interested party to maintain a protest. 4 C.F.R. § 21.0(a). Since ASI has presented no

argument or information establishing that our prior decision is legally or factually erroneous, we deny the request for reconsideration. See 4 C.F.R. § 21.12(a).

A handwritten signature in black ink, appearing to read "J. Hinchman", is written over a horizontal line. Below the signature, the name and title are printed.

James F. Hinchman
General Counsel